

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HENRY RIOS

VS.

WAL-MART

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C.A. NO. 5:20-cv-910

JURY DEMANDED

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441

TO THE CLERK OF THE ABOVE ENTITLED COURT:

Please take notice that Defendant, Wal-Mart hereby removes to the Court the state action described below.

1. On June 16, 2020, a civil action was commenced, in the 45th Judicial District Court of Bexar County, Texas, entitled *Henry Rios v. Wal-Mart*; Cause No 2020CI10931. A copy of Plaintiff's Original Petition is attached hereto as **Exhibit A**.

2. Service of summons and complaint was made on Defendant, Wal-Mart by certified mail on July 6, 2020. Defendant, Wal-Mart first received a copy of said Petition on July 9, 2020. A copy of the Citation is attached hereto as **Exhibit B**.

3. Defendant has filed an Original Answer, which is attached as **Exhibit C**, a Demand for Jury Trial, which is attached as **Exhibit D** and a Notice of Filing of Removal to Federal Court, attached as **Exhibit E**. Defendant has attached all process, pleadings, and orders in the State Court action as required by 28 U.S.C. 1446(a).

JURISDICTION AND VENUE

4. The action is a civil action of which this Court has original jurisdiction under Title 28 U.S.C. § 1332 (Diversity Jurisdiction), and is one which may be removed to this Court pursuant to Title 28 U.S.C. § 1441. There is complete diversity of citizenship amongst the parties.

Defendant, Wal-Mart is a common name and not a legal entity. Defendant is not a citizen of Texas as it is not a legal entity.

5. Plaintiff asserts in her petition that, "... Wal-Mart is a foreign limited liability company..." (Exhibit A, para 3). Plaintiff further asserts in her premises liability cause of action that, "...Defendant was in possession of the premises located at 10781 Toepperwein Road, Converse Texas, which forms the basis for this suit." (Exhibit A, paragraph 11). As noted above, Wal-Mart is not a legal entity and does not have any citizenship. Plaintiff's naming of Wal-Mart is a misnomer. The proper legal name of the entity who was the possessor of the premises where the alleged incident occurred, is Wal-Mart Stores Texas, LLC, which is a foreign limited liability company as Plaintiff alleges.¹ Plaintiff is a Texas citizen, with his residence in Bexar County, Texas.

6. The amount in controversy exceeds the sum of Seventy-five Thousand Dollars (\$75,000.00), exclusive of interest and costs. *See paragraph 21 of Plaintiff's Original Petition.*

7. Venue is proper in the Western District of Texas, San Antonio Division because this District and Division embrace the place in which the action is pending.

¹ Although not correctly named as a Defendant, the proper entity, Wal-Mart Stores Texas, LLC, is not a Texas citizen. Wal-Mart Stores Texas, LLC is a limited liability company formed under the laws of Delaware, with its principal place of business in Arkansas. The sole member of Wal-Mart Stores Texas, LLC is Wal-Mart Real Estate Business Trust. Wal-Mart Real Estate Business Trust is a Delaware statutory trust with its principal place of business in Arkansas. The sole unit holder of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co. which is a wholly owned subsidiary of Wal-Mart Stores East, LP. Wal-Mart Property Co. is a corporation formed under the laws of the State of Delaware with its principal place of business in the State of Arkansas. Wal-Mart Stores East, LP is a Delaware limited partnership, of which WSE Management, LLC is the general partner, and WSE Investment, LLC is the limited partner. WSE Management, LLC is a Delaware limited liability company, and has its principal place in Bentonville, Arkansas. WSE Investment, LLC is a Delaware limited liability company, and has its principal place in Bentonville, Arkansas. The sole member of WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC. (f/k/a Wal-Mart Stores East, Inc.), whose parent company is Walmart Inc. (f/k/a Wal-Mart Stores, Inc.). Wal-Mart Stores East, LLC is a limited liability company formed under the laws of the State of Arkansas, and has its principal place of business in the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart Inc. (f/k/a Wal-Mart Stores, Inc.).

Dated: August 5, 2020

Respectfully submitted,

Daw & Ray
A Limited Liability Partnership

/s/ *Willie Ben Daw, III*
Willie Ben Daw, III; TBN: 05594050
Email: wbdaw@dawray.com
James K. Floyd; TBN: 24047626
Email: jfloyd@dawray.com
14100 San Pedro Ave., Suite 302
San Antonio, Texas 78232
(210) 224-3121 Telephone
(210) 224-3188 Facsimile

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record by electronic service on this the 5th day of August, 2020.

Steven A. Nunez
The Law Offices of Thomas J. Henry
521 Starr Street
Corpus Christi, Texas 78401

Email: snunez-svc@tjhlaw.com

/s/ *Willie Ben Daw, III*
Willie Ben Daw, III

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INDEX OF DOCUMENTS FILED WITH REMOVAL ACTION

- (A) Plaintiff's Original Petition and Discovery
- (B) Citation
- (C) Defendant's Original Answer
- (D) Defendant's Demand for Jury Trial
- (E) Notice of Filing of Removal to Federal Court
- (F) List of Counsel of Record

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LIST OF COUNSEL OF RECORD

1. Steven A. Nunez; SBN: 24107206
Email: snunez-svc@tjhlaw.com
The Law Offices of Thomas J. Henry
521 Starr Street
Corpus Christi, Texas 78401
(361) 985-0600
Fax No: (361) 985-0601

ATTORNEYS FOR PLAINTIFF, HENRY RIOS

2. Willie Ben Daw, III; SBN: 05594050
Email: wbdaw@dawray.com
James K. Floyd; SBN: 24047626
Email: jfloyd@dawray.com
14100 San Pedro Ave., Suite 302
San Antonio, Texas 78232
(210) 224-3121 Telephone
(210) 224-3188 Facsimile

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